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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,415	06/05/2001	Peter James Sutherland Goldsack	B-4199 618841-6	8918
7590	03/03/2004		EXAMINER	
Richard P. Berg c/o Ladas & Parry 21st Floor 5670 Wilshire Boulevard Los Angeles, CA 90036			TORRES, JOSEPH D	
			ART UNIT	PAPER NUMBER
			2133	6
DATE MAILED: 03/03/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
09/875,415	GOLDSACK ET AL.	
Examiner	Art Unit	
Joseph D. Torres	2133	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 January 2004.
2a) This action is **FINAL**. 2b) This action is non-final.
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-8 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
10) The drawing(s) filed on 05 June 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the Applicant's amendment A of Paper No. 5, the Applicant contends, "claim 1 recites 'claim 1 recites "opening and maintaining an information block flow by sending repeated message blocks...""' The Examiner asserts that the emphasis provided by the Applicant makes apparent that the intended interpretation of language is: opening and maintaining an information block flow whereby the information block flow is maintained by sending repeated message blocks. The Examiner asserts that the language has two other interpretations: 1. opening and maintaining an information block flow whereby the information block flow is opened by sending repeated message blocks, or 2. opening and maintaining an information block flow whereby the information block flow is opened by sending repeated message blocks and the information block flow is also maintained by sending repeated message blocks. As such, claim 1 is ambiguous and does not warrant the Applicant's suggested interpretation in the Applicant's amendment A of Paper No. 5.

Claims 2-8 depend from claim 1, hence inherit the deficiencies of claim 1.

Response to Arguments

2. Applicant's arguments filed 29 January 2004 have been fully considered but they are not persuasive.

The Applicant contends, "It is noted that claim 1 is directed to a method of making block error rate measurements".

In response to applicant's arguments, the recitation "making block error rate measurements" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

The Applicant contends, "The Examiner goes on to assert that Sato teaches 'opening and maintaining an information block flow', referring to column 1, lines 15-31 of Sato. Where is there any discussion or reference to 'opening and maintaining an information block flow by sending repeated message blocks...'".

The Examiner asserts that the emphasis provided by the Applicant makes apparent that the intended interpretation of language is: opening and maintaining an information block flow whereby the information block flow is maintained by sending repeated message

blocks. The Examiner asserts that information block flow comprises the whole session by which a group or blocks of data is transmitted to a receiver till the receiver receives the entire block or group of information correctly. In the Applicant's amendment A of Paper No. 5, the Applicant acknowledges that "in packet systems and in other error correction communication schemes, packets or data can be repeated", hence if the block or group of blocks is not correctly received, the information block flow is openly maintained by repeating a message block or a group of message blocks that were incorrectly received.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "The application as filed teaches one way of providing a 'predetermined characteristic' (intentionally attaching incorrect FCS in the disclosed embodiment) which causes the message blocks to be discarded upon processing" [Emphasis Added]) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The Examiner would like to point out that in the Applicant's amendment A of Paper No. 5, the Applicant explicitly states, "The error correction code in the prior art does not cause the message to be discarded. It is the error in transmission which causes the error to be discarded and the error detection code only permits the error to be detected." [Emphasis Added]

The Examiner asserts that an error in transmission is still a 'predetermined characteristic' since it is characterizes the transmitted data as erroneous.

The Applicant contends, "Claim 8 recites that 'the predetermined characteristic comprises inclusion in a message block of an invalid frame check sequence.' In the Examiner's handling of the rejection of claim 8, the Examiner basically assumes that the 'inclusion in a message block of an invalid frame check sequence' is known in the prior art, without bothering to show where it is known in the prior art". The Examiner asserts that an error in the transmission channel can render the frame check sequence invalid so that the message block includes an invalid frame check sequence. It is well documented in the Prior Art that errors do occur randomly and can affect any part of transmitted data, hence if the error occurs in the frame check sequence then the invalid frame check sequence is the predetermined characteristic. The Examiner suggests that if the Applicant intends something different that the Applicant use precise language to claim the Applicant's intended meaning.

The Examiner disagrees with the Applicants and maintains all 35 U.S.C. 103(a) rejections of claims 1-8. All amendments and arguments by the applicant have been considered. It is the Examiner's conclusion that amended claims 1, 3 and 9 and previously examined claims 1-8 are not patentably distinct or non-obvious over the prior art of record in view of the references, Sato, Tsuyoshi (US 5592468 A) and Decker,

Peter (US 5946320 A), as applied in the last office action, Paper No. 4. Therefore, the rejection is maintained.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipate by Sato, Tsuyoshi (US 5592468 A).

See Paper No. 4 for detailed action of prior rejections.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato, Tsuyoshi (US 5592468 A) in view of Decker, Peter (US 5946320 A).
See Paper No. 4 for detailed action of prior rejections.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Torres whose telephone number is (703) 308-7066. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decay can be reached on (703) 305-9595. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art UNIT 2133

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